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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,	)	Case No.: C 17-00939 WHA
)	
Plaintiff,	)	NON-PARTY ANTHONY
	)	LEVANDOWSKI'S NOTICE OF
v.	)	MOTION AND MOTION FOR
	)	INTERVENTION UNDER RULE 24(b);
UBER TECHNOLOGIES, INC., <i>et al.</i>,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES; [PROPOSED] ORDER
Defendants.)	
	)	Date: to be set by the Court
	)	Time: to be set by the Court
	)	Courtroom: The Honorable William H.
	)	Alsup, Courtroom 8, 19th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at a date and time selected by this Court, in the courtroom of the Honorable William h. Alsup, San Francisco Courthouse, Courtroom 8, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, non-party Anthony Levandowski will and

1 hereby does bring a motion for permissive intervention under Federal Rule of Civil Procedure
2 24(b) in the above-entitled matter.

3 This motion is based on this notice of motion and motion, the below memorandum of
4 points and authorities, the pleadings, files and records in this case, as well as other written or oral
5 argument which may be presented at the hearing.

6
7 Date: April 5, 2017

Respectfully submitted,

8
9 /s/

10 Miles Ehrlich

Ismail Ramsey

Amy Craig

Ramsey & Ehrlich

Counsel for Non-Party Anthony

Levandowski

MEMORANDUM OF POINTS AND AUTHORITIES

After the status conference of March 29, 2017, this Court ordered that counsel for non-party Anthony Levandowski submit any motion under the Fifth Amendment to suspend the production or privilege log requirement by April 4, 2017, at noon. Docket No. 132. In compliance, Mr. Levendowski has filed a motion for an order modifying the Court's March 16, 2017 Order. *See* Docket No. 147.

By the present motion, Mr. Levandowski, a non-party, requests that this Court grant him permissive intervention under Rule 24(b) to fully litigate that motion. Under Rule 24(b), the district court has the discretion to grant permissive intervention where the intervenor's "claim . . . and the main action have a question of law or fact in common." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002). The rule is liberal – "If there is a common question of law or fact, the requirement of the rule has been satisfied and it is then discretionary with the court whether to allow intervention." *Id.* at 1109, *quoting* 7C Wright, Miller & Kane, Federal Practice and Procedure § 1911, 357-63 (2d ed. 1986). And courts will grant permissive intervention where a non-party seeks to modify a discovery order to protect a constitutional right. *See e.g., San Jose Mercury News, Inc. v. United States Dist. Court*, 187 F.3d 1096, 1100 (9th Cir. 1999) (reversing district court's denial of permissive intervention to allow a non-party to pursue its First Amendment right of access challenge to an existing protective order).

Further, the grant of permissive intervention will protect Mr. Levendowski's right to appeal orders of this Court: "An intervenor may appeal from 'all interlocutory and final orders that affect him . . . whether the right under which he intervened was originally absolute or discretionary.'" *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 376 (1987) *quoting* Moore & J. Kennedy, Moore's Federal Practice para. 24-15, pp. 24-169-24-170 (2d ed. 1985).

Because Mr. Levandowski seeks to modify an existing Order of this Court to ensure the protection of his Fifth Amendment rights, this Court should grant the present motion for

1 permissive intervention. A grant of permissive intervention will allow Mr. Leveandowski to
2 fully litigate the issue both in the district court and the Ninth Circuit.

3 For the foregoing reasons, the Court should grant the present motion to intervene under
4 Rule 24(b).

5
6 Date: April 5, 2017

Respectfully submitted,

7
8 /s/

9 Miles Ehrlich

10 Ismail Ramsey

Amy Craig

Ramsey & Ehrlich LLP

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12 *Counsel for Non-Party Anthony*
13 *Levandowski*
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[PROPOSED] ORDER

For the reasons stated above, non-party Anthony Levandowski may intervene pursuant to Federal Rule of Civil Procedure 24(b) in the above-captioned matter.

DATE: _____

WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE

v